

BEFORE THE THREE MEMBER DUE-PROCESS PANEL  
PURSUANT TO RSMO. *Sect.* 162.961

,	)	
Petitioner,	)	
	)	
vs.	)	
	)	
	)	
DUNKLIN R-V SCHOOL DISTRICT,	)	
	)	
Respondent.	)	

**ORDER**

Respondent has filed a “Motion To Dismiss Due Process Request” pursuant to the Chairperson’s “Order” entered January 12, 2004 in which it was noted that the filings in this case indicated that the Petitioner had permanently moved from the Respondent School District at the end of the 2002-2003 school year and is attending school currently in the St. James, Missouri area. Petitioner has responded to the motion to dismiss per letters filed with the Chairperson. Consequently, the motion is now in a position to be ruled.

In its motion Respondent argues that the request for due process hearing should be dismissed because “the issues raised are moot and not justiciable” inasmuch as Petitioner has permanently moved out of the Respondent School District and has been attending school in St. James R-I School District in or near Rolla, Missouri since the beginning of the 2003-2004 school year. It should be noted that Respondent did not file his request for due process hearing against the Respondent School District until December 18, 2003. Respondent cites *Thompson v. Board of the Special School District No. 1*, 144 F. 3d 574 (8<sup>th</sup> Cir. 1998) which ruled that “Thompson has not stated a cause of action under IDEA because his request for a review comes after he left the District previously responsible for his education.” *Thompson* at 578. The *Thompson* court explained its ruling as follows:

“If a student changes school districts and does not request a due process hearing, his or her right to challenge prior education services is not preserved. Subsequent challenges to the student’s previous education

become moot because the new school district is responsible for providing a due process hearing.” *Id* at 579. See also, *Smith v. Special School District, No. 1*, 184 F. 3d 764 (8<sup>th</sup> Cir. 1999).

By the same token the Respondent Dunklin R-V School District no longer has the responsibility for the Petitioner’s education and challenges to his previous education at Dunklin become moot.

The Chairperson notes that Ms. , Petitioner’s mother, is also seeking monetary damages in his behalf against the Respondent School District. IDEA makes no provision for such damages and they are not available thereunder. See § 615 (b) (6) of IDEA, 20 U.S.C. 1415(b) (1) (E) which provides for “an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child . . . .” See *Thompson v. Board of the Special School District No. 1*, 144 F. 3d 574, which holds:

“As to compensatory damages, a claim based upon defendants’ alleged violations of the IDEA may not be pursued in this . . . action because general and punitive damages . . . are not available under IDEA.” *Id* at 580..

Petitioner has cited no case or statute which disputes or in any way contradicts the cases cited by Respondent School District. Nor has the Chairperson found such case or statute by virtue of his independent research. As stated in Respondent’s brief in support of its motion because the Petitioner has relocated to a different school district, the St. James R-I District will be responsible to develop an IEP that contains programming and a placement that is appropriate to its particular school system and programs. Consequently, the Respondent School District’s motion to dismiss the Petitioner’s due process request is granted. Because of the ruling on the basis of lack of jurisdiction it is not necessary to reach Respondent’s second argument, namely, that Petitioner’s due process request is barred by the statute of limitations.

Accordingly, Petitioner’s request for due process hearing is hereby dismissed and the hearing scheduled for January 29, 2004 is cancelled.

Petitioner has the right to appeal this order as follows:

**PLEASE TAKE NOTICE** that you have a right to request review of this decision pursuant to the Missouri Administrative Procedure Act, § 536.010 *et seq.* RSMo., specifically, § 536.110 RSMo. (as amended) which provides in pertinent part as follows:

- “1. Proceedings for review may be instituted by filing a petition in the Circuit Court of the county of proper venue within 45 days after the mailing or delivery of the notice of the agency’s final decision . . . .
3. The venue of such cases shall, at the option of the plaintiff, be in the Circuit Court of Cole County or in the county of the plaintiff or one of the plaintiff’s residence. . . .”

**PLEASE TAKE FURTHER NOTICE** that, alternatively, your appeal may be taken to the United States District Court for the Eastern District of Missouri in lieu of appeal to the State courts, 20 U.S.C. § 1415.

Dated this 26<sup>th</sup> day of January 2004.

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GEORGE J. BUDE, Chairperson

Cc: Ernest G. Trakas, Esq.

Victoria Teson, Panel Member  
Terri Shank, Panel Member